IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3714 OF 2005

Rajesh Babaji Sawant. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri Prakash Naik for the Applicant.

Shri S.R.Borulkar P.P. with Ms.S.D.Shinde, A.P P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 23rd June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. An offence has been registered against the applicant and other co-accused under sections 302, 109, read with 34 of the Indian Penal Code and sections 3 and 25 of the Arms Act. The allegation is that one Balu Wavhal who was operating cable network in and around Antop Hill area, was shot by a fire arm by an assailant who was accompanied by one more assailant. The F.I.R. was filed by one Ramesh Janardan Shirgaonkar. His son is also carrying on business as cable operator and the deceased Balu and complainant Shirgaonkar are stated to be friends and were jointly carrying on business of cable net work. The allegation is that in the area of the Applicant and one Santosh Ghadigaonkar were also carrying on the cable business. The case of the prosecution is that there was a dispute between the son

of the Complainant and the deceased Balu on the one hand and the Applicant and Santosh on the other hands as regards the cable business. The allegation is that the dispute was taken to the Court of law and ultimately son of the Complainant and Balu succeeded. The allegation is that the Applicant and Santosh started threatening Balu and started interfering with his business.

3. The incident occurred at about 7.45 p.m. on 3rd June 2005 when Balu visited the place of the Complainant. When outside the house of the Complainant the deceased was talking on cell phone two persons came there and the deceased Balu was shot at. The investigation is complete and the charge sheet has been filed.

4. Shri Naik appearing for the Applicant submitted that he is claiming bail on the basis of parity based on the order passed in favour of the co-accused Santosh Ghadigaonkar who was enlarged on bail by the learned Additional Sessions Judge. He submitted that the role ascribed to the Applicant and the said Santosh is same and the specific case of the prosecution is that the Applicant and the said Santosh engaged the services of a killer by name Ranjit. He submitted that the case of the Applicant is at par with the said Santosh.

5. He further stated that even on merits also the

Applicant is entitled to be enlarged on bail. He submitted that the Applicant had nothing to do with the cases filed in this Court and the Supreme court. He submitted that the prosecution has not been able to pinpoint anything against the Applicant and except for suspicion there is nothing against the Applicant. He submitted that the case made out by the son of the Complainant Sudhir in his statement that he along with the deceased Balu and other cable operators challenged the action of MHADA authorities of allowing only one person to operate cable network in Pratiksha Nagar. The only allegation made by the said Shri Sudhir is that the Applicant did not help them in the Court cases.

6. Shri Borulkar, the learned P.P. submitted that the case against the Applicant is completely different and is not par with the case of Santosh. He submitted that the statement of witness Dilip recorded on 10th June 2005 shows that the Applicant had hired the killer Ranjit. He submitted that in so far as the co-accused Ranjit is concerned, there is material indicating his involvement in the case. He submitted that there is recovery of revolver which was allegedly used in the offence. He stated that it is the Applicant who had hired the services of the killer and therefore, the Applicant is not entitled to parity. He submitted that considering the seriousness of the crime, the Applicant is not entitled to be enlarged on bail. Shri Naik in

reply submitted that the statement of the said witness has been recorded belatedly and there is no explanation for the delay. He pointed that in the said statement the witness has not stated that the Applicant had engaged the co-accused Ranjit and therefore, the said statement will not help the prosecution. He pointed out that even while opposing the application made by the co-accused, the stand taken by the prosecution was that the Applicant had engaged the services of Ranjit. He has placed reliance on the decision of the Apex Court in (2005) All M.R.(Cri.) 822 (S.C.) (Jayendra Saraswati v/s. Stae of Tamil Nadu) and submitted that confessional statement of the co-accused cannot be relied upon at this stage unless strong primafacie case is made out by the prosecution which lends support to the alleged confessional statement.

7. I have considered the rival submissions. In the F.I.R. the case made out is that the Applicant and Santosh are the persons who were giving threats to the victim and they had hired the services of a professional killer. While deciding the Application filed by Santosh, the learned Sessions Judge has observed that there was no material to support the theory of conspiracy or that Santosh had agreed with the Applicant herein and others to do away with Balu. The learned Judge also observed that the threat to deceased apparently came from the Applicant in this application.

8. The statement of the witness Dilip relied upon by prosecution does not support the case of the prosecution that the Applicant had engaged the killer. However, it is stated by the said dilip that the Applicant had told the said witness to get rid of the deceased Balu. Moreover, the said statement suggest that it is Applicant who attempted to engage a person for killing the deceased. Thus the statement primafacie suggests that steps were taken by the Applicant to employ a killer to get rid of the deceased. This aspect is very relevant for considering the plea of parity with the case of co-accused Santosh. The said Santosh was granted relief as no material was produced on record to support the theory of involvement of Santosh in the conspiracy as observed by the learned Sessions Judge. Moreover it is noted by the learned Sessions Judge that it was an undisputed fact that Santosh was an handicapped person. Therefore, in my view, the Applicant cannot claim parity on the basis of the order passed in the case of co-accused Santosh.

9. So far as the merits are concerned, there is primafacie case against the Applicant in the sense that the Applicant had made efforts to engage a contract killer, which is borne out from the statement of a witness recorded on 10th June 2004, which is within 7 days from the date of occurrence and therefore, the

criticism of the learned Counsel of the Applicant that it is belatedly recorded cannot be accepted. Considering the manner in which the offence is committed, the material disclosed against the Applicant that he is involved in engaging the contract killer and gravity of the charge against the Applicant, this is not a case where the Applicant can be enlarged on bail. There is no merit in the application and the same is rejected.

Judge.